ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 16, 2024

Case No. 24-1130 Consolidated With No. 24-1113

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

TIKTOK INC. and BYTEDANCE LTD.

Petitioners,

v.

MERRICK B. GARLAND, in his official capacity as Attorney General of the United States,

Respondent.

(continued on inside cover)

ON PETITION FOR REVIEW OF THE PROTECTING AMERICANS FROM FOREIGN ADVERSARY CONTROLLED APPLICATIONS ACT (H.R. 815)

ADDENDUM TO OPENING BRIEF OF CREATOR PETITIONERS VOLUME 4 of 4 (Add. 405–427)

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Petitioner,

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MERRICK B. GARLAND, in his official capacity as Attorney General of the United States,

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Biden, Trump each pitch existential fear of the alternative to voters

BY BRETT SAMUELS - 01/12/24 5:30 AM ET









Cutouts of former President Donald Trump and President Joe Biden are facing off in front of an American flag. While Biden has warned that democracy is at stake, Trump is using dystopian language to describe a nation te

To listen to the two leading candidates for the White House tell it, there's much more on the line in November's election than control of the executive

President Biden has warned democracy, truth and the character of the nation is at stake in 2024. He has told donors a victory this November could very well save American democracy, underscoring the grave threat he believes former President Trump poses to U.S. institutions.



Place an Ice Cube on a Burger When Grilling, Here's Why

Trump, for his part, has used dystopian language to describe a nation teetering on the edge of destruction if Biden wins reelection. At one recent rally in Sioux Center, Iowa, Trump said the country was "dying" and "a mess"



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and claimed if Biden remains in office, immigration will become such a problem that "we're not going to have a country."

Democrats and Trump critics lambaste comparing the two messages in any way that elevates the risk of a second Biden term to those of a second Trump term. They cite Trump's own words suggesting he'd be a dictator on day one and calling for prosecuting his opponents.

"There are some conservatives who are trying to make this claim that somehow Biden is a bigger risk than Trump," former Rep. Liz Cheney (R-Wyo.) said on "The View" Wednesday. "My view is I disagree with a lot of Joe Biden's policies. We can survive bad policies. We cannot survive torching the Constitution."

But the intensity of the rhetoric from Biden and Trump gets at the reality that each side is seeking to motivate its base voters with grave warnings of what the future of the country would be under the alternative.

And the success of those messages could be critical assuming Trump wins the GOP nomination and faces Biden in the fall.

Such a contest would likely be close and largely could depend on turnout, strategists in both parties have long pointed out.



In both 2016 and 2020, several thousand voters across a handful of swing states ultimately decided the outcome of the election.

The Hill/Decision Desk HQ polling averages show Trump leading Biden in a hypothetical rematch in November by roughly 1 percentage point. Swing state polling has been mixed, with Biden leading Trump in Pennsylvania in a Quinnipiac University poll released Wednesday, and Trump leading Biden in Michigan in a Detroit News poll released this week.

And in an election where a large number of voters don't want to elect Biden and Trump, convincing supporters to turn out because of the danger of the alternative could be key.



"There's a limited pool for each side to go after," said Sean Spicer, a former Trump White House press secretary. "One of the greatest motivators is fear."

Biden's campaign has embraced the idea that democracy itself is on the ballot in 2024, echoing the message that helped propel him to the White House in 2020.

"As we begin this election year, we must be clear: Democracy is on the ballot. Your freedom is on the ballot," Biden said in his first campaign speech of the year, delivered Jan. 5 in Pennsylvania.

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"Whether democracy is still America's sacred cause is the most urgent question of our time," he added. "And it's what the 2024 election is all about."

In South Carolina on Monday, Biden argued Trump and his supporters who push the false claim that the 2020 election was fraudulent are a danger to America's basic values and to the concept of the truth.

"The truth is under assault in America," Biden said in Charleston. "As a consequence, so is our freedom, our democracy, our very country because, without the truth, there is no light. Without light, there's no path from this darkness."



A Quinnipiac University poll of Pennsylvania voters released Wednesday underscored why Biden has leaned into such stark messaging. The poll found 44 percent of Democrats said their top issue in 2024 was preserving democracy, with no other issue reaching double digits.

An Associated Press-NORC poll released in December found 67 percent of voters said November's election will be important to the future of democracy, ranking behind only the 75 percent who said it would be important for the economy.

Trump's rhetoric, which has always been hyperbolic, has conversely painted a picture of a nation falling apart that cannot bear another four years without him in office.



"2024 is our final battle. It is our final battle. If we lose this battle, we lose our country," Trump said at a recent rally in Iowa, adding the stakes of the election "could not be higher."

Trump frequently describes Biden as "incompetent" and tells his supporters the nation's borders are being overrun, inflation is skyrocketing and the U.S.

is not respected on the world stage. He often tells supporters the country is "going to hell."

"I don't know how much more our nation can take."



At a December rally in Nevada, Trump told supporters that, with their votes, "we are going to save America."

The former president appears poised to tap into concerns about immigration among independents and Republican voters, both of which listed border security as their top issue in the Quinnipiac poll of Pennsylvanians.

Trump's dark rhetoric about Democratic rule is familiar terrain for the former president. In his inaugural address in January 2017, Trump infamously described the "American carnage" that had left cities decaying and overrun with crime.

Biden has in some cases looked to turn Trump's own rhetoric against him, arguing the former president's language is not reflective of the American public.

"None of you believe America is failing. We know America is winning. That's American patriotism," Biden said to applause in Pennsylvania last week.

Political strategists acknowledged the risks in Biden's approach in particular. They noted that because he's the incumbent, there is more pressure on him to make a positive case for his candidacy rather than just offering warnings about his opponent.

But Democrats and even some Republicans said Biden's rhetoric is rooted in concerns about what Trump himself has said should he regain power, giving it a heightened sense of urgency.

"We don't really have to speculate about the kinds of things [Trump] wants to do during a second term because he's saying these things. So if people are paying attention they're aware of it," said Sarah Matthews, a former Trump White House official who has spoken out about the risks Trump poses to democracy.

"I think that the people that he would need to win over most in a general election, those kinds of independent voters, they're paying attention to these statements and they're concerned," she added.

TAGS DONALD TRUMP JOE BIDEN JOE BIDEN LIZ CHENEY MICHIGAN NEVADA PENNSYLVANIA

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Biden asks Americans to recommit to democracy in Normandy cliff speech

By **Jeff Mason**June 8, 2024 12:07 AM UTC · Updated 10 days ago





POINTE DU HOC, France, June 7 (Reuters) - Atop the cliff that U.S. Army Rangers scaled 80 years ago on D-Day, President <u>Joe Biden</u> on Friday compared the threats posed by Nazi Germany to those facing the world today by dictators and authoritarianism, and urged Americans to resist isolationism.

Biden's speech in Normandy, his second in as many days, sought to strengthen support for Ukraine, which is locked in a war with Russia and its <u>President Vladimir Putin</u>, and bolster democratic ideals at home. Biden said the Army Rangers who fought that day would want Americans to defend freedom.

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"Does anyone doubt that they would want America to stand up against Putin's aggression here in Europe today?" he asked

Biden never mentioned his Republican rival in the Nov. 5 $\underline{presidential\ election}$, $\underline{Donald\ Trump}$, but his speech criticized the former president's isolationist inclinations.

"The most natural instinct is to walk away, to be selfish, to force our will upon others, to seize power and never give up," Biden said, in an apparent dig at Trump. "American democracy asks the hardest of things: to believe that we're part of something bigger than ourselves."

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Biden urged Americans to remember the Rangers whose dramatic heroism on D-Day helped make the invasion a success.

"As we gather here today, it's not just to honor those who showed such remarkable bravery on that day, June 6, 1944," Biden said. "It's to listen to the echo of their voices. To hear them... They're not asking us to scale these cliffs, but they're asking us to stay true to what America stands for."

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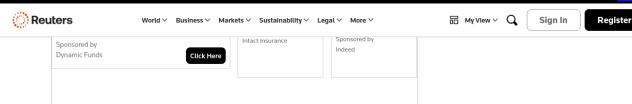
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On June 6, 1944, the elite Ranger troops scaled the 100-foot (30-meter) cliffs overlooking Omaha Beach under withering gunfire and seized German artillery pieces that could have fired on American troops coming ashore at Omaha and nearby Utah Beach.

By setting his speech at Pointe du Hoc, Biden echoed Republican predecessor Ronald Reagan, who marked D-Day's anniversary there 40 years before. Reagan said democracy was "worth dying for" and emphasized an American desire for peace in what turned out to be the waning years of the Cold War.

Biden's goal was to draw a "through line" from World War Two, connecting the Cold War, the establishment of the NATO military alliance and Russia's current war with Ukraine, White House national security adviser Jake Sullivan said.



[1/3] U.S. President Joe Biden delivers remarks at the World War II Pointe du Hoc Ranger Monument following the 80th anniversary of the 1944 D-Day landings in Cricqueville-en-Bessin, Normandy, France, June 7, 2024. REUTERS/Elizabeth Frantz Purchase Licensing Rights [2]

"We're the fortunate heirs of a legacy of these heroes, those who scaled the cliffs at Pointe du Hoc. But we must also be the keepers of their mission." Biden said.

CONTRAST WITH TRUMP

The U.S. president is in the middle of a five-day trip to France, <u>a rare excursion abroad</u> during an election year in which he faces a tight race against Trump, a Republican who has threatened to use a second four-year term to punish political rivals, deport immigrants and upend global alliances.

Trump has <u>criticized the cost</u> of supporting Ukraine after Russia's invasion, proposed higher tariffs as part of an "America First" policy and <u>questioned</u> America's decades-long commitment to NATO, saying European members are not paying their fair share.

On Thursday, Biden <u>made an impassioned call</u> for the defense of freedom and urged Western powers to stand by Ukraine in its fight with Russia.

The D-Day anniversary on June 6 and surrounding events are part of Biden's presidential duties, not campaign events. But they gave him a chance to contrast himself with Trump.

Biden, at 81 the <u>oldest to serve</u> in the office, has sought to rebut concerns about his age by focusing on the

stand by Ukraine in its fight with Russia.

The D-Day anniversary on June 6 and surrounding events are part of Biden's presidential duties, not campaign events. But they gave him a chance to contrast himself with Trump.

Biden, at 81 the oldest to serve in the office, has sought to rebut concerns about his age by focusing on the potential impact Trump, 77, could have during a second term.

The Democratic incumbent has characterized Trump, whose supporters raided the U.S. Capitol after the Republican declined to accept his 2020 election loss, as a threat to U.S. democracy.

Meanwhile, hard-right parties are gaining ground in Europe, and Russia's President Putin said on Wednesday he could deploy conventional missiles within striking distance of the United States and its allies if they allowed Ukraine to strike deeper into Russia with long-range Western weapons.

"This will hit the core messages that Biden is wanting to highlight during his re-election campaign but also has real resonance still in Europe as well," said Max Bergmann, director of the Europe, Russia, and Eurasia Program at the Center for Strategic & International Studies.

Biden met with World War Two veterans in Normandy on Thursday and with <u>Ukrainian President</u> Volodymyr Zelenskiy on Friday.

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Reporting by Jeff Mason; Editing by Heather Timmons, Cynthia Osterman, Jonathan Oatis and Diane Craft

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Jeff Mason is a White House Correspondent for Reuters. He has covered the presidencies of Barack Obama, Donald Trump and Joe Biden and the presidential campaigns of Biden, Trump, Obama, Hillary Clinton and John McCain. He served as president of the White House Correspondents' Association in 2016-2017, leading the press corps in advocating for press freedom in the early days of the Trump administration. His and the WHCA's work was recognized with Deutsche Welle's "Freedom of Speech Award." Jeff has asked pointed questions of domestic and foreign leaders, including Russian President Vladimir Putin and North Korea's Kim Jong Un. He is a winner of the WHCA's "Excellence in Presidential News Coverage Under Deadline Pressure" award and co-winner of the Association for Business Journalists' "Breaking News" award. Jeff began his career in Frankfurt, Germany as a business reporter before being posted to Brussels, Belgium, where he covered the European Union. Jeff appears regularly on television and radio and teaches political journalism at Georgetown University. He is a graduate of Northwestern University's Medill School of Journalism and a former Fulbright scholar.

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Obama, Donald Trump and Joe Biden and the presidential campaigns of Biden, Trump, Obama, Hillary Clinton and John McCain. He served as president of the White House Correspondents' Association in 2016-2017, leading the press corps in advocating for press freedom in the early days of the Trump administration. His and the WHCA's work was recognized with Deutsche Welle's "Freedom of Speech Award." Jeff has asked pointed questions of domestic and foreign leaders, including Russian President Vladimir Putin and North Korea's Kim Jong Un. He is a winner of the WHCA's "Excellence in Presidential News Coverage Under Deadline Pressure" award and co-winner of the Association for Business Journalists' "Breaking News" award. Jeff began his career in Frankfurt, Germany as a business reporter before being posted to Brussels, Belgium, where he covered the European Union. Jeff appears regularly on television and radio and teaches political journalism at Georgetown University. He is a graduate of Northwestern University's Medill School of Journalism and a former Fulbright scholar.

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Untangling Disinformation

This is what Russian propaganda looks like in 2024

JUNE 6, 2024 · 5:00 AM ET

HEARD ON ALL THINGS CONSIDERED



Shannon Bond













Russian navy recruits perform with the Russian flag in St. Petersburg, Russia, on June 4 during a ceremony marking the departure of recruits to join the army. In a year filled with elections around the world, Russia has stepped up its overt and covert propaganda efforts with a goal of weakening international support for Ukraine

A deepfake video of a State Department official falsely claiming a Russian city is a legitimate target for Ukrainian strikes using U.S. weapons.

Pro-Russia social media accounts amplifying stories about divisive political topics such as immigration and campus protests over the war in Gaza.

Sham news sites spoofing real publications or posing as legitimate-sounding outlets with names like D.C. Weekly, the Boston Times and Election Watch.

Russian propaganda is ramping up in a busy global





city is a legitimate target for Ukrainian strikes using U.S. weapons.

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Sham news sites spoofing real publications or posing as legitimate-sounding outlets with names like D.C. Weekly, the Boston Times and Election Watch.

Russian propaganda is ramping up in a busy global election year, targeting American voters as well as elections in Europe and the Paris Olympics, according to intelligence officials, internet researchers and tech companies.



UNTANGLING
DISINFORMATION
2024 elections are
ripe targets for foes of

democracy

"Russia remains the most active foreign threat to our elections," Director of National Intelligence Avril Haines told senators last month at a briefing about election risks.

Influence operations linked to Russia take aim at a disparate range of targets and subjects around the world. But their hallmarks are consistent: attempting to erode support for Ukraine, discrediting democratic institutions and officials, seizing on existing political divides and harnessing new artificial intelligence tools.

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"They're often producing narratives that feel like they're throwing spaghetti at a wall," said Andy Carvin, managing editor at the Atlantic Council's Digital Forensic Research Lab, which tracks online information operations. "If they can get more people on the internet arguing with each other or trusting each other less, then in some ways their job is done."

Some efforts have been linked directly to the Kremlin, including a network of fake accounts and phony news websites given the name Doppelganger, whose operators have been sanctioned by both the U.S. and the European Union.



UNTANGLING DISINFORMATION

U.S. elections face more threats from foreign actors and artificial intelligence

The origins of others are still unknown, such as the fabricated video of State Department spokesman Matthew Miller, in which reporters' questions and Miller's response about U.S. policy in the Ukraine war were faked, likely with the help of artificial intelligence. The video circulated on Russian Telegram channels and was picked up by Russian state media and government officials, according to The New York Times.

Russia employed tactics such as exacerbating existing divisive issues and creating fake accounts posing as Americans in its 2016 and 2020 election-



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fabricated video of State Department spokesman Matthew Miller, in which reporters' questions and Miller's response about U.S. policy in the Ukraine war were faked, likely with the help of artificial intelligence. The video circulated on Russian Telegram channels and was picked up by Russian state media and government officials, according to The New York Times.

Russia employed tactics such as exacerbating existing divisive issues and creating fake accounts posing as Americans in its 2016 and 2020 election-meddling efforts, researchers say. Since Russia invaded Ukraine in early 2022, discrediting Ukraine and amplifying voices in the U.S. and other countries that oppose aid to Ukraine and support for NATO has become a dominant theme of the Kremlin's efforts.

"What you can see is they are referencing politics in a certain country, and they are generally tying that to what is going on in Ukraine. The underlying message is, 'Here's why people should not support Ukraine,'" said Ben Nimmo, principal investigator on OpenAI's intelligence and investigations team, who previously led global threat intelligence at Facebook's owner, Meta.



UNTANGLING DISINFORMATION

Al fakes raise election risks as lawmakers and tech companies scramble to catch up

Fake accounts, phony websites

The Kremlin relies on what Haines called "a vast multimedia influence apparatus, which consists of its intelligence services, cyber-actors, state media proxies and social media trolls" to pump out propaganda, launder fake and misleading news articles and circulate conspiracy theories.

Since the invasion of Ukraine, the European Union has banned Russian media outlets including RT, Sputnik, Voice of Europe and RIA Novosti from publishing or broadcasting within the bloc. That hasn't stopped RT articles from proliferating across hundreds of other websites widely available in Europe, according to a recent report from the German Marshall Fund of the United States, the University of Amsterdam and the Institute for Strategic Dialogue.



UNTANGLING DISINFORMATION

Facebook takes down Russian network impersonating European news outlets

"We discovered RT articles reposted to third-party websites targeting audiences from Iraq to Ethiopia to New Zealand, often without any indication that the content was sourced from a Russian propaganda outlet," the researchers wrote.

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Perhaps the most persistent and prevalent Russian online operation is



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Perhaps the most persistent and prevalent Russian online operation is Doppelganger. First identified by researchers at the EU DisinfoLab in 2022, the campaign has impersonated news outlets including the U.K.'s *The Guardian*, Germany's *Der Spiegel*, *The Washington Post* and Fox News, and it has posed as NATO, the Polish and Ukrainian governments, the German police and the French Foreign Ministry.

In addition to operating fake accounts and phony websites, the operation purchased Facebook ads targeting French and German audiences with messages about aid to Ukraine, farmers' protests and the war in Gaza, according to the European nonprofit AI Forensics.

Doppelganger has also set its sights on the Paris Olympics, Microsoft said in a report this week. It used fake French-language news sites to push claims of corruption in the Games' organizing body and to warn of potential violence.

In March, the U.S. Treasury sanctioned two Russian companies identified as being behind Doppelganger — Social Design Agency and Structura — as well as their founders, saying they carried out the campaign "at the direction of the Russian Presidential Administration."

The misinformation-tracking company NewsGuard has connected a separate network of 167 websites "masquerading as independent local news publishers in the U.S." to a former deputy sheriff from Florida who now lives in Moscow.

Using AI tools to create propaganda

The volume of posts, articles and websites that Russian-linked operations produce is being boosted by artificial intelligence — another new factor that sets 2024 apart from previous election cycles.

Covert influence campaigns based in Russia, as well as in China, Iran and Israel, have begun using AI in their attempts to manipulate public opinion and shape politics, according to recent reports from OpenAI, Meta and Microsoft.



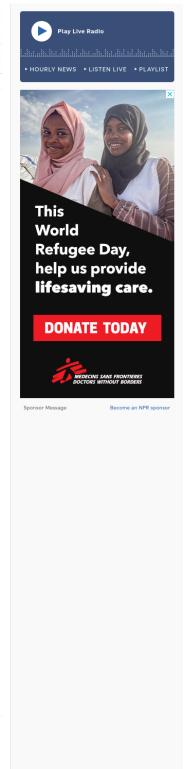
Israel

A Russian operation that Microsoft calls Storm-1679 used AI to fake actor Tom Cruise's voice narrating a phony Netflix documentary disparaging the International Olympic Committee.

According to OpenAI, Doppelganger has used its AI tools, which include ChatGPT, to translate articles into other languages and generate social media posts and comments. Another Russian operation, dubbed Bad Grammar, used AI to debug code for a program that automatically posted on Telegram.

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posts and comments. Another Russian operation, dubbed Bad Grammar, used AI to debug code for a program that automatically posted on Telegram.



The question remains: How effective are Russia's attempts to influence public opinion and democratic elections?

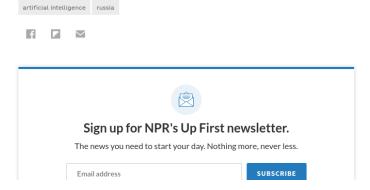
Many online operations that have been publicly identified haven't reached large audiences of real people, researchers say, and AI hasn't made them any more convincing — at least not yet.

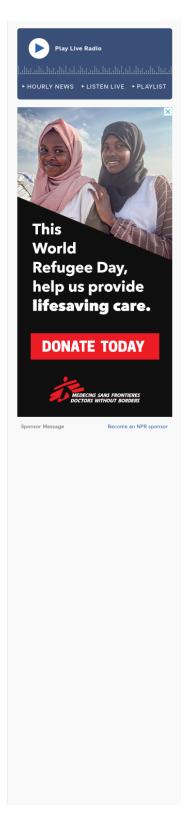
"It's absolutely true that when you look at an individual campaign, it's just as likely as not that it hasn't had a huge amount of influence, which is why Russia just does it again and again, or in a different form, or targeting a different group," the Digital Forensic Research Lab's Carvin said. "It's almost like producing cheaply manufactured goods and just getting it out there in the world, hoping that maybe one particular gadget ends up becoming the popular toy of the season, even if the others completely fail."

Many researchers who study disinformation warn against seeing the hand of Russia as an all-powerful puppeteer, especially since so much of what its mouthpieces amplify is homegrown.

"Any potential narrative that's being argued in a given political environment is fodder for Russian operations — which in itself can sound a little crazy and conspiracy-ish," Carvin said. "And in some ways you risk creating a ... situation where absolutely everything that's happening online is all Russia's fault."

But, he added, "at the same time, Russia has a lot of resources at its disposal and it's willing to experiment in different ways to see which things stick. ... Why not try all of the above and see where it takes you?"

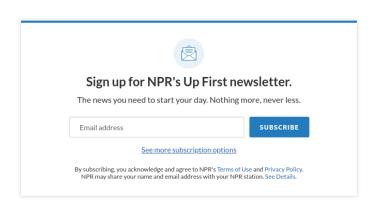




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EXHIBIT 44

THREAT POSED BY TIKTOK

(Department of Justice – March 6, 2024)

- National security risk. TikTok and its parent company ByteDance present key national security concerns.
 - O Data Security. TikTok collects tremendous amounts of sensitive data. TikTok also collects substantial back end data that may be proprietary, which may be available only to TikTok—and those with whom TikTok shares it. This is not publicly available data and can include customer information like name, age, phone number, and email address. It may also include IP address and approximate location, as well as other, unknown categories of personal data.¹
 - PRC Influence. TikTok's content selection relies on a proprietary PRC-based algorithm, creating the potential for the PRC to influence content on TikTok—without United States visibility.
 - Application Security. TikTok's source code and some operations are based in the PRC, which creates the potential
 for the PRC to exploit them for other potentially malign uses.
- Why does this matter? Working through ByteDance, the PRC could use TikTok to access data on millions of U.S. users and control the software on millions of U.S. devices.
 - The PRC government leads the world in using surveillance and censorship to keep tabs on its populations, repress dissent, and counter perceived threats abroad. Its national security law requires any company doing business in China to make its data accessible to the PRC government and to support its intelligence efforts. Any such cooperation must remain secret, limiting visibility into the extent of data shared with PRC entities.
 - News reports have warned that ByteDance employees in China used TikTok to repeatedly access U.S. user data and track multiple journalists covering the company.²
 - The ability to weaponize data and conduct sophisticated influence campaigns will only advance over time, as artificial intelligence enables new capabilities. Given the sophistication of TikTok's PRC-based algorithm, it would be difficult to detect malicious changes to it.
- What to do about it? The ultimate goal is to protect Americans' data security and our national security. To achieve that goal, any legislative solution would need to (1) separate TikTok the company from Beijing and its PRC-based parent company and (2) separate the data TikTok collects, its algorithm, and source code from Beijing. If these conditions are not met—whether through divestment or some other means—Beijing will continue to have the authority to demand ByteDance hand over sensitive personal data and intellectual property of its U.S. TikTok users, likely without those users' awareness.
 - Our existing laws (IEEPA, CFIUS) have limits that make it challenging to effectuate that separation and fully address the national security risks.
 - We would be in a stronger legal position if any new legislation authorizes the government to order divestment and/or other alternatives, not just impose a ban. In addition, an orderly divestment of TikTok from the PRC would give Americans secure ownership of their data, including posts, photos, and videos, while minimizing the disruption to the over 100 million TikTok accounts in the United States.
- What about American apps? Because ByteDance is headquartered in Beijing, TikTok is subject to the control of the PRC government in a way that American social media apps are not. That puts TikTok's American users at risk. While a broader conversation may be warranted about the collection of data by American social media companies, that conversation is separate from the national security risk posed by social media apps controlled—directly or indirectly—by foreign governments like the PRC that are known for their surveillance and censorship. The Department stands ready to provide technical assistance to Congress on legislation addressing other concerns related to social media apps, including concerns related to the safety of our children.

¹ See Brian Fung, *TikTok collects a lot of data. But that's not the main reason officials say it's a security risk*, CNN (Mar. 24, 2023), https://www.cnn.com/2023/03/24/tech/tiktok-ban-national-security-hearing (also mentioning contact lists, messages, biometric identifiers, keystroke patterns, and information gathered from interaction with the app, such as user-generated content, interests, preferences, and associated metadata); Geoffrey A. Fowler, *Is it time to delete TikTok? A guide to the rumors and the real privacy risks*, WASH. POST (July 13, 2020), https://www.washingtonpost.com/technology/2020/07/13/tiktok-privacy.

² E.g., Emily Baker-White, EXCLUSIVE: TikTok Spied On Forbes Journalists, FORBES (Dec. 22, 2022), https://www.forbes.com/sites/emilybaker-white/2022/12/22/tiktok-tracks-forbes-journalists-bytedance.